Supreme Court, U. S.
FILED
AUG 5 1977
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 77-202

IN THE MATTER OF

JOSEPH M. KADANS

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF NEVADA. (No. 8738)

# JURISDICTIONAL STATEMENT

Joseph M. Kadans
3419 Thom Blvd.
Las Vegas, Nev. 89106
Appellant in pro se

BEST COPY AVAILABLE

INDEX


| | Page |
|---|---|
| Opinions below | 2 |
| Jurisdiction | 2 |
| Statutes Involved | 4 |
| Questions Presented | 6 |
| STATEMENT OF THE CASE | |
| I The Questions Are Substantial... | 6 |
| A. The Issues as Defined by the Proceedings in the Nevada Supreme Court | 6 |
| B. The Legal and Factual Importance of the Constitutional Issues | 11 |
| Relief Requested | 15 |

## TABLE OF AUTHORITIES

Page

STATUTES:

Constitution of the United States
Preamble ..... 4
Article 1, Section 8, Clause 1..... 4
Article IV, Section 1..... 4
Amendment IV, Section 1..... 4

Federal laws
Title 15, United States Code,
Commerce and Trade, Sec. 2..... 5

Title 28, United States Code,
Judiciary and Judicial Procedure,
Section 1257..... 5

Title 42, United States Code,
The Public Health and Welfare,
Section 1983..... 5

Cases
Bates v. State Bar of Arizona,
433 U.S. ___ (1977)..... 4
Edwards v. California,
314 U.S. 160 (1940)..... 14
Goldfarb v. Virginia State Bar,
421 U.S. 773 (1974).....12,15
Hackin v. Lockwood,
361 F 2d 499, reh. den.; cert. den.
385 U.S. 960..... 4
Konigsberg v. State Bar,
353 U.S. 252 (1957)..... 4
Lockwood, In re
154 U.S. 116 (1894)..... 4



## TABLE OF AUTHORITIES - CONTINUED

Page

Parker v. Brown,
317 U.S. 341 (1943)..... 12
Rosenthal v. State Bar,
116 Conn. 409, 166 A 211, 87 ALR 991
(1933) ..... 4
Schecter Poultry Corp. v. U.S.
295 U.S. 495, 55 S.Ct. 837 (1935).... 4
Summers, In re
352 U.S. 561 (1945)..... 4
Willner v. Committee,
373 U.S. 96 (1963)..... 4
Yick Wo v. Hopkins, 118 U.S. 356 (1889)
..... 4

Nevada Statutes
Supreme Court Rule 51(4)..... 2, 3,
6, 11, 15

IN THE
SUPREME COURT OF THE UNITED STATES

---

OCTOBER TERM, 1976

---

NO.

---

IN THE MATTER OF

JOSEPH M. KADANS

---

ON APPEAL
FROM THE SUPREME COURT OF THE STATE
OF NEVADA
(No. 8738)

---

# JURISDICTIONAL STATEMENT

An attorney with approximately nineteen years of law practice, law teaching and law writing and in good standing as a lawyer in the States of Maryland and Michigan, with no record of any disciplinary action against him, after repeatedly seeking admission to the Nevada Bar Examination, filed a Petition in the Court below seeking to be admitted to the Nevada Bar Examination so that he would be allowed to earn a livelihood in his profession.

The Nevada Supreme Court denied the Petition and denied the Motion for Rehearing.

## OPINIONS BELOW

The opinion of the court below is printed in the Appendix. (A1-7). The order denying rehearing is also in the Appendix. (A-7-8)

## JURISDICTION

Nature of the Appeal:

This action challenges the existence of a Nevada Supreme Court rule 51(4) as unfairly depriving Appellant of the right to continue with his practice of law, commenced by him in 1943 after being duly admitted to the Maryland Bar upon passing the Maryland Bar Examination.

Previous to entering the practice of law, Appellant was a Safety Inspector and Special Agent for the U. S. Bureau of Motor Carriers of the Interstate Commerce Commission. Appellant served with the U.S. Government from 1932 to 1944, when he resigned to practice law. He was admitted to the Maryland Bar in 1943 and to the U. S. Supreme Court Bar in 1946. After practicing in Maryland for approximately seven years, he moved to Michigan and was admitted to the Michigan Bar on Motion in 1952. He moved to Nevada in 1962 and has made several efforts to be admitted to the Nevada Bar examination, without success. Appellant had never been reprimanded or disciplined by any Bar.

Appellant claims that he has been denied due process of law and equal protection of the law, guaranteed to him by the 14th Amendment of the United States Constitution.



Appellant also claims that Nevada Supreme Court Rule 51(4) should be declared void and unconstitutional because it is anticompetitive in nature, intended to protect members of the Bar from the competition of lawyers moving to Nevada from other States, thereby maintaining higher prices for legal services, depriving individuals of their choice of legal counsel and otherwise engaged in exploitation of the citizens of Nevada as well as denying to Appellant his civil rights under color of State law.

Appellant also believes that the aforesaid Nevada Supreme Court Rule 51(4) is void and unconstitutional because it unlawfully delegates to an unincorporated association of individuals the duty of establishment of a list of approved law schools, graduation from which schools being established by the Supreme Court in its rule 51(4) as a prerequisite for admission to the Nevada Bar examination.

## JURISDICTION OF THE COURT:

Inasmuch as there is being challenged the validity of a statute (the Supreme Court Rule being equivalent to a statute) of a State on the ground of repugnancy to the Federal Constitution and the decision of the lower court being in favor of its validity, there is clearly jurisdiction in this court to take jurisdiction. Cases sustaining this jurisdiction are:

Lothrop v. Donohue, 367 U.S. 820 (1961)
Goldfarb v. Virginia State Bar, 421 U.S. 773, 95 S.Ct. 2004 (1975)
Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752 (1957)

BEST COPY AVAILABLE

Yick Wo v. Hopkins, 118 U.S. 356 (1886)
Bates v. State Bar of Arizona, 433 U.S. ___ 1977
Schecter Poultry Corp. v. U.S. 295 U.S. 495, 55 S.Ct. 837 (1935)
Konigsberg v. State Bar, 353 U.S. 252 (1957)
Willner v. Committee, 373 U.S. 96 (1963)
In re Summers, 352 U.S. 561 (1945)
Rosenthal v. State Bar, 116 Conn. 409, 166 A 211 87 A.L.R. 991 (1933)
In re Lockwood, 154 U.S. 116 (1894)
Hackin v. Lockwood, 361 F 2d 499, reh. denied, cert. den, 385 U.S. 960.

## STATUTES INVOLVED

Constitution of the United States:

Preamble.
" *** promote the general welfare ***."

Article 1, Section 8, Clause 1
The Congress shall have power to *** provide for the *** general welfare of the United States.

Article IV, Section 1.
Full faith and credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State.

Article XIV of Amendments, Section 1
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



Title 28 of United States Code, Judiciary and Judicial Procedure, Section 1257:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

Title 15 of United States Code, Commerce and Trade, Section 2.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Title 42 of United States Code, The Public Health and Welfare, Section 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

## QUESTIONS PRESENTED BY THE APPEAL

1. Does this Court have jurisdiction to review this appeal from the decisions of the Supreme Court of Nevada?

2. Is a rule of the Nevada Supreme Court requiring applicants for the Nevada Bar to be graduates of ABA-approved law schools equivalent to a statute of the State of Nevada for the purpose of jurisdiction of this Court under Title 28, U.S.C. 1257(2)?

3. Is the aforesaid Supreme Court Rule contrary to the U. S. Constitution in that it unfairly and unconstitutionally deprives Appellant from earning his livelihood in his profession, thereby depriving him of due process of the law and equal protection of the law?

4. Is the aforesaid Supreme Court Rule unconstitutional in that it is anti-competitive and tends to form a monopoly to maintain high prices?

## STATEMENT OF THE CASE

### I
### The Questions are Substantial

A. The Issues as Defined by the Proceedings in the Nevada Supreme Court.



Petitioner in the court below was invited to file a petition with the Supreme Court of Nevada requesting waiver of S. C. R. 51(4)(A11).

The letter of invitation stated that the petition would be referred to the Board of Bar Examiners for a full inquiry and report to determine whether or not S. C. R. 51(4) "operates unfairly in your case." Petitioner below was told that in the event of an adverse report by the Board an opportunity would be afforded to petitioner "for argument to this Court regarding disputed legal and evidentiary matters, and regarding the Board's ultimate recommendation." (A12)

The Board made an adverse recommendation but the Nevada Supreme Court, despite its letter from the Chief Justice, declined to allow an opportunity for argument before the Court.

Despite the finding of the Board, as contained in the Record, that petitioner below "is suitably prepared academically for the practice of law" (Report of State Board of Bar Examiners, page 7), the Board reported to the Nevada Supreme Court "the Board feels that any waiver of the rule would create equal protection problems and in fact petitioner himself has claimed a denial of equal protection because of the waiver some years ago of the rule to permit a graduate of Cambridge University to take the examination." (From Report of State Board, page 8)

It is therefore clear that both the Board and the Nevada Supreme Court, in fear of criticism for past exceptions to the Supreme Court Rule (51(4), have denied an exception to the petitioner below and Appellant herein in order to avoid further criticism.

In order that this Statement of the Case may be clear with regard to the substantiality of the constitutional questions presented, there is included in the Appendix herein a copy of the Order of the Nevada Supreme Court allowing an individual who never graduated from any United States law school whatsoever to be admitted to practice law in Nevada. (A13).

In the aforementioned case described in the preceding paragraph, the State Bar of Nevada, had originally opposed the admission of the law student from England by stating to the Nevada Supreme Court that "the petitioner herein (that he) had not practiced law in England, nor any place else, and in fact, lacked three years clerkship and the passing of a final examination before even becoming eligible to practice in England." (Quotation from Points and Authorities in support of Motion to Dismiss the Petition of Mr. Burleigh, filed with the Nevada Supreme Court on March 23, 1972.)

By Order filed December 19, 1966, in the case of Clarence A. Nelson, Jr., Petitioner vs. State of Nevada Bar Association, the Nevada Supreme Court admitted Mr. Nelson "as a member of the State Bar of Nevada" although Mr. Nelson was a graduate of a law school that "was not an accredited law school by the American Bar Association." (Quotations from Order of the Nevada Supreme Court.)

The foregoing two instances (Burleigh and Nelson) have not been reported in the official case reports. There may be a number of other cases of admission of lawyers who have never graduated from a law school accredited by the American Bar Association but the Clerk of the Nevada Supreme Court has declined to furnish a list of all lawyers admitted to the Nevada Bar.



The complete record will show that Appellant in the case at bar has been seeking admission to the Nevada Bar Examination since 1963 but has been denied admission to the bar examination solely because of not having graduated from a law school approved by the American Bar Association. Appellant did graduate from a law school approved by the State of Maryland, from which he graduated in 1943 after passing the Maryland Bar Examination in that year. Appellant resigned from U. S. Government service and entered the full time practice of law in Maryland on December 1, 1944. He was later admitted to the Michigan Bar on motion in January 1952. When he moved to Nevada in March, 1962, he was denied admission to the Nevada bar examination and has been seeking admission to such examination since that time.

While in Nevada seeking admission to the Nevada Bar Examination, Appellant qualified to teach in the public schools in Nevada under State law by taking graduate and undergraduate classes in Education at the University of Nevada, Las Vegas and at Northern Arizona University, Flagstaff. Appellant taught in the Nevada public school system for two years and then, following the death of his wife due to cancer and becoming convinced that the answer to cancer was for people to cease the use of tobacco, drugs, alcohol, food laden with preservatives and even coffee, due to the caffeine content, enlarged the

program of a church-oriented school, now known as Bernadean University, named after his late wife, to include courses of study in natural foods and use of safe herbs instead of drugs.

The Opinion of the Nevada Supreme Court refers to the activities of Appellant relative to his writings on health and health-teaching activities in a derogatory manner (A3-A5) basing its opinion upon the denial of a license to operate in Nevada by the Nevada Commission on Postsecondary Institutional Authorization. Inasmuch as the charges of financial instability, insufficient school facilities and personnel and other alleged deficiencies have been alleged by Appellant (who is President of Bernadean University) to be untrue and the denial of the license has been appealed and it is still under appellate consideration, it is most surprising that the Nevada Supreme Court has undertaken to publicly comment on a pending case by relying upon the denied charges as true. The matter of the appeal from the denial of the school license is now pending before the Nevada Supreme Court as Case No. 9688 and is tentatively set for argument some time in 1978. Contrary to customary judicial practice, the Nevada Supreme Court has commented publicly on a case pending before it by, in effect, ruling in advance, prior to hearing the evidence, that a case before it will be decided in favor of the licensing State commission.

The foregoing reference indicates that the Nevada Supreme Court, contrary to the 14th Amendment to the United States Constitution, has denied due process of law to Appellant. This is in addition to denial of equal protection of the law to which Appellant is entitled.



The continued steadfast adherence of the Nevada Supreme Court over the years to the rule that applicants seeking to practice law in Nevada must be graduates of law schools approved by the American Bar Association is a manifestation of an anticompetitive activity contrary to Title 15 of the United States Code relating to monopoly and the welfare clause of the United States Constitution.

In addition, despite the plain command of the Nevada legislature to admit qualified persons to the practice of law, the Supreme Court, acting in combination with the State Bar of Nevada, has established stringent regulations that have the effect of restricting competition.

Further, they have, without authority of the legislature, delegated the authority to make rules for determination of competent law schools by passage of a rule that only those law schools approved by the American Bar Association are acceptable law schools. The legislature established no standards for the determination as to which are acceptable law schools nor did the Nevada Supreme Court establish any standards.

## B. THE LEGAL AND FACTUAL IMPORTANCE OF THE CONSTITUTIONAL ISSUES.

Aside from the constitutional issues of due process and equal protection of the laws, there are two novel, perhaps unique, constitutional problems raised by these proceedings. First, there is the matter of unlawful delegation of authority without proper standards and second, there is the matter of alleged anticompetitive activities on the part of the Nevada Supreme Court, acting merely as an instrumentality for

the members of the State Bar of Nevada in protecting them from competition. It may be said that the voice is the voice of the Supreme Court but that the hand is the hand of the practicing lawyer.

In Goldfarb v. Virginia State Bar, 421 U.S. 773 (1974), it was held that the antitrust laws were applicable to the legal profession. In Nevada, the history of the legal profession of this State indicates a firm and constant practice of the Nevada Supreme Court not making any changes in the rules of admission with regard to attorneys from sister states without a recommendation from the State Bar of Nevada. This constitutes, essentially, a private anti-competitive activity and it cannot therefore be claimed to be beyond the Sherman Act's reach.

It was pointed out in the Goldfarb Case, supra that the legal profession, although classed as a "learned profession" was not exempt from the Sherman Act.

It is likewise clear that the activities of the Nevada Bar are not "state action" within the meaning of Parker v. Brown, 317 U.S. 341 (1943) so as to be exempt from the Sherman Act. The comment of the Court in Goldfarb is especially appropriate to this question:

> "The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members."

There is no diminution of the authority of the State to regulate its professions by requiring



the State bars to forsake traditional principles of monopoly by limiting entry of other lawyers into the state under clearly transparent pretexts or excuses for reducing competition.

For example, in the case at bar, the Appellant has been accused of being unethical by reason of identifying himself as a professor of law at Loyola Law School, Los Angeles instead of "Lecturer in Law," the official title used for payroll classifications. The fact that Appellant is a member in good standing of the American Association of University Professors and the fact that all faculty members in institutions of higher learning are generally referred to as professors was ignored by the Nevada Supreme Court. (A6, "he was only a lecturer.")

The State Bar does not hesitate to resort to distortions. Although the official records of Loyola Law School show that 27 students started the admiralty law course taught by Appellant at Loyola and that all 27 finished the course, the Nevada Supreme Court sought to demean the capability of Appellant to teach admiralty law. Prior to teaching at Loyola, Appellant had taught admiralty law to lawyer groups in many cities throughout the United States and is the author of "Principles of Maritime Law", a book on the recommended list of the Association of American Law Schools since 1967. The Appendix contains a copy of a recent letter from Loyola Law School evidencing Appellant's teaching experience at Loyola and his listings in the law school catalog. (A15)

To illustrate the subservience of the Nevada Supreme Court to the State Bar of Nevada, there

is included in the Appendix (A15) the copy of a letter from the Chief Justice of that Court to the Chairman of the Board of Bar Examiners inquiring whether or not it would be "appropriate" to make a change in the Supreme Court rules. Never in the history of the United States Supreme Court has that Court ever written to the head of the American Bar Association inquiring whether or not it would be appropriate to make a change in the court rules. The United States Supreme Court has control over its rules of court but the Nevada Supreme Court has surrendered its control to the State Bar of Nevada.

As indicated in the case of Edwards v. California, 314 U.S. 160 (1940) a state's police power is not unlimited and a state may not interfere with interstate commerce by adopting laws or rules that interfere with the free movement of persons from one state to another, either for the purpose of commerce or for the purpose of finding employment. Mr. Justice Douglas, in concurring with the majority, added:

> "But I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, steel, fruit and coal across state lines."(P. 177)

It is therefore clearly established that there is interstate commerce involved; that the exemption of the State from the Sherman Act is not applicable under circumstances such as in the case at bar and that both due process and equal protection under the law has been denied to Appellant.

While it is understood that lawyers have historically been officers of the courts, as so



well stated in Goldfarb, supra , a ruling that the rights of Appellant under the Constitution in the case at bar will not effect any diminution of the authority of the State of Nevada to regulate the legal profession.

But the States should know that a State law, whether the formal enactment of a State legislature or the adoption of a rule of the State Supreme Court that arbitrarily designates a private association to establish standards for law schools is an unlawful delegation of powers of the State; and that such a rule is especially unconstitutional if it interferes with interstate commerce so as to prevent lawyers from moving freely from state to state to earn a livelihood and being deprived of the opportunity to be examined as to their skills; and that a rule that tends to maintain high prices to the consumer for legal services by obstructing the entry of competent attorneys from other states on the pretense of protection of the public is anticompetitive and subject to censure as being contrary to the Sherman Act.

## RELIEF REQUESTED

Appellant moves this Court to note jurisdiction of this appeal and upon such appeal and after argument and hearing declare that Supreme Court Rule of Nevada 51(4) is overbroad and contrary to the 14th Amendment relating to the due process and equal protection clauses and contrary to antitrust legislation.

Respectfully submitted,

Joseph M. Kadans
Appellant in pro se

## INDEX


Page

Opinions below ..... 2

Jurisdiction ..... 2

Statutes Involved ..... 4

Questions Presented ..... 6

STATEMENT OF THE CASE

I The Questions Are Substantial... 6

A. The Issues as Defined by the Proceedings in the Nevada Supreme Court..... 6

B. The Legal and Factual Importance of the Constitutional Issues..... 11

Relief Requested..... 15